IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.271 OF 2005
IN
CRI APPEAL NO.452 OF 1998

Janardan Gharu Yadav ...Applicant.

V/s

The State of Maharashtra ...Respondent.

Mr. S.B. Mishra with Mr. S.D. Bhosale for the applicant.

Mr. D.P. Adsule, APP for the State.

CORAM: V.M.KANADE,J.
DATE : 4th April 2005

P.C.

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. Applicant was convicted by the Trial Court for an offence punishable under section 147, 148 of the Indian Penal Code and he was sentenced to suffer RI for one year and to pay fine of Rs 500/- and in default to suffer RI for three months. He was also convicted under section 324 read with section 149 of the Indian Penal Code and sentenced to suffer RI for one year. He was also convicted under section 452 read with section 149 of the Indian Penal Code and sentenced to suffer RI for three months. Against the said order, appeal was preferred. This Court by order dated 18/3/2005 directed that the applicants be

released on probation for a period of one year on executing the bonds of good conduct with sureties in the sum of Rs 1000/-. each to keep the peace and maintain tranquillity. Thus the discretion was exercised by this Court under section 4 of the Probation of Offenders Act, 1958.

3. It is submitted by the learned counsel appearing for the applicants that since the applicant was given the benefit of section 4 of the Probation of Offenders Act, no disqualification was attached to the said conviction in view of the provisions of section 12 of the Probation of Offenders Act. It is submitted that the applicant was suspended during trial. However, that suspension had not been revoked only because of the fact that he was convicted by this Court.

4. Applicant, therefore, has filed this application for a declaration that the applicant does not suffer from any disqualification. Section 12 of the Probation of Offenders Act reads as under:-

> "12. Removal of disqualification attaching to conviction.- Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the

provisions of Section 3 of Section 4 shall not suffer disqualification, if any, attaching to conviction of an offence under such law :

Provided that nothing in this section shall apply to a person who, after his release under Section 4, is subsequently sentenced for the original offence."

From the bare perusal of the said section, it is abundantly clear that it starts with non-obstante clause and even though a person is convicted and benefit of provisions of section 4 is given to such person, no disqualification is attached to the conviction and merely because he is convicted or his conviction is confirmed such a disqualification is removed by virtue of section 12 of the Probation of Offenders Act. It is, therefore, clarified that though the applicant may have been convicted by the Trial Court and his conviction is confirmed by this Court, since this Court has exercised its discretion under section 4 of the Probation of Offenders Act, the provisions of section 12 would automatically come into effect and the disqualification, therefore, shall be deemed to be removed. Applicant has already completed a period of one year of good behaviour on or about

18/3/2005. During this period, he has not violated bond of good conduct and no complaints have been filed against him. In these circumstances, application is allowed in terms of prayer clause (a).

V.M. KANADE, J.